No. 23489.

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# Supreme Court of the United States

OCTOBER TERM, 1914.

NO. 91.

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THE MICHIGAN CENTRAL RAILROAD COMPANY,
*Plaintiff in Error,*

*vs.*

THE MICHIGAN RAILROAD COMMISSION,
*Defendant in Error.*

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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## REPLY BRIEF FOR PLAINTIFF IN ERROR.

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## Reply of Plaintiff in Error to Brief for Defendant in Error.

### I.

THE RULE THAT THIS COURT WILL ADOPT THE CONSTRUCTION OF THE STATE COURT PLACED UPON AN ACT OF THE LEGISLATURE.

We have no controversy with the cases cited and the general rule stated on pages 10 to 12 of the Attorney General's brief, but submit that it is equally well established that if the construction given by the state court to the act of the legislature, or the application thereof under the order of the Michigan Railroad Commission, violates the provisions of the Federal Constitution, this court will exercise its corrective power in that behalf.

### II.

THE RIGHT TO REQUIRE PHYSICAL CONNECTION.

This matter is discussed somewhat on pages 12 to 20 of the brief. As the physical connection has been made the question of authority to make the order in that respect is not presented by this record.

## III.

### The Interchange of Cars.

The point at issue in this respect is, can the Michigan Central be required to make delivery in its own cars, or cars under its control, off from its own line and upon the line of a connecting road, and not as the Attorney General seems to think, can it be required to transport cars tendered to it by the Detroit United Railway, or can the Detroit United Railway be required to transport cars tendered to it by the Michigan Central.

The case of *Chicago, Milwaukee & St. Paul vs. Iowa*, 233 *U. S.*, 234, cited by the Attorney General, does not determine the question presented by plaintiff in error. At best it is but a ruling that the carrier may be required to transport cars suitable for transportation over its line when tendered to it. The point made by plaintiff in error was expressly reserved, as the court said, at page 345:

> "No question, however, is presented here as between the shippers and *the owners of the cars*, and no actual interference with interstate commerce is shown."

In this case the Michigan Central as the owner of the cars, or as having in its control the "foreign cars" received in interstate commerce which it obtains under contract relations with the foreign roads and under which contract it has no authority or permission to grant the use thereof to the Detroit United Railway Company (pp. 44, 36-37) is here protesting and claiming that to compel it to turn its property over to the Detroit United Railway for the use of the latter violates the law of he land.

*Wisconsin, etc., R. Co. vs. Jacobson*, 179 *U. S.*, 287, decided no more than the roads could be compelled to install physical connection. The ruling is summed up on page 301 as follows:

> "As we have said, it is unnecessary in this case to determine the question of the validity of the whole act with regard to all its provisions and details. We need express no opinion upon that subject. We simply here determine that the judgment actually rendered, directing this track connection be made and thus affording track facilities at Hanley Falls, does not violate the constitutional rights of the plaintiff in error."

There can be no mistaking this view of the court for it is referred to in *Central Stock Yards vs. Louisville & Nashville, etc. R. R. Co.*, 192 *U. S.*, 568, *at* 571.

> "All that was decided in *Wisconsin, Minnesota & Pacific R. R. vs. Jacobson*, 179 *U. S.*, 287, was that by statute two railroad companies might be required to make track connections."

*Grand Trunk Railway Co. vs. Michigan Railroad Commission*, 231 *U. S.*, 457. This case does not rule the contention made by plaintiff in error. It decided in short

(a) That a transportation service might begin and end within the limits of a city.

(b) That a carrier was obligated to receive and transport a car *tendered* to it by a connecting carrier at a junction point within the city limits.

(c) That the Michigan statute provided compensation to the receiving carrier for such transportation service.

The contention made by the plaintiff in error in the instant case was not before the court in any manner, nor was it discussed.

*Stillwell Street Railway Co. vs. Boston & Mass. R. R. Co.*, 171 *N. Y.*, 589, was a simple case of ordering physical connection between tracks of companies organized under the General Railroad Law. The fact that one was operated by electricity as a motive power is immaterial. The question of the use of cars, interchange of traffic, was not passed upon nor before the court for decision.

*Pittsburgh, etc. Ry. Co. vs. Hunt*, 171 *Ind.*, 192 (86 *N. E.*, 328). The point at issue was the authority of the Railroad Commission to compel the construction of an interchange track as a means of physical connection between the roads. The statute invoked contained many regulations on the subject of interchange traffic and use of cars, but all questions on these latter subjects were reserved as the Railroad Commission had made no order in that regard. It should be noted, however, that the statute expressly recognized the right of a carrier to maintain traffic upon its own line by furnishing its own cars where it could reach the destination point reached by a competitive company.

*The Railroad Commission of Alabama vs. Northern Alabama Ry. Co.*, 62 *So. Rep.*, 749, was an action to review an order of the commission requiring the construction of a Union Station, and *City of Emporia vs. Atchison, etc. Ry. Co.*, 88 *Kas.*, 611 (129 *Pac.*, 161) was a case of an ordinance requiring the railroad at its own expense to construct a subway through an embankment crossing a public street, and *Vandalia R. Co. vs. Railroad Commission*, 101 *N. E. Rep.*, 85 inquired into the validity of a statute requiring the railroad to substitute a high power headlight for those commonly in use.

The orders of the commissions and the city in these cases were but an ordinary exercise of the police power and in no way involved a taking of property as in the instant case.

In *State ex rel Chicago, etc. Ry. Co. vs. Public Service Commission*, 77 *Wash.*, 529 (137 *Pac.*, 1057) the commission had ordered the railroad to construct a side track on its own property which would be open to public use, the particular shipper asking for the construction being obligated to pay the expense in the first instance. We see nothing in this except the ordinary use of police power.

In *Colorado, etc. Co. vs. Railroad Commission*, 54 *Colo.*, 64 (129 *Pac.*, 506) the material issue was the authority of the Railroad Commission to compel the railroad to operate both passenger and freight trains over a branch of its road which could be operated only at a loss. The order was valid under the rules laid down by this court in *Atlantic Coast Line vs. North Carolina Commission*, 206 *U. S.*, 1.

*State ex rel Great Northern vs. Public Service Commission*, 76 *Wash.*, 625 (137 *Pac.*, 132) is distinctly a case in favor of the contention of plaintiff in error. The commission had established joint rates and through routes between points on the Northern Pacific which were within the switching district of Tacoma to other points on the Great Northern and Chicago, Milwaukee & Puget Sound, each of the latter companies having physical connection with the Northern Pacific in the Tacoma switching district. Prior to this there had been an additional local freight charge for the movement over the Northern Pacific to the junction with the other lines. The court in sustaining the order of the commission pointed out (pages 632, 634) that the statute of Washington had been framed along the lines pointed out by this court in the *Stock Yards Cases*, and that the commission was directed to and did *before* making the order, not only fix rates and the route, but made rules and reg-

ulations for the expeditious and safe return of and as well proper compensation for cars employed in the interchange service. The statute is set out in full on pages 630-631.

The Washington statute contained the very elements which are lacking in the Michigan statute. The order of the Michigan Railroad Commission does not even attempt to provide for any of these necessary items.

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